

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

MARK ALLEN PAYNE,

Plaintiff,

v.

CIVIL ACTION NO. 3:12-0580

WESTERN REGIONAL JAIL,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that Plaintiff's Application to proceed without prepayment of fees and costs (Doc. #1) be **DENIED** pursuant to 28 U.S.C. § 1915(e)(2)(B) and his complaint (Doc. #2) be **DISMISSED, with prejudice**, for failure to state a claim. Neither party has filed objections to the Magistrate Judge's findings and recommendation. The Court notes that the Proposed Findings was returned as undeliverable from the Southwestern Regional Jail. Plaintiff has not provided a new address.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and, consistent with the findings and recommendation, **DENIES** Plaintiff's Application to proceed without prepayment of fees and costs (Doc. #1) pursuant to 28 U.S.C. § 1915(e)(2)(B) and **DISMISSES, with prejudice**, his complaint (Doc. #2) for failure to state a claim.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: July 5, 2012

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE